

MOTION INFORMATION STATEMENT

Docket Number(s): 14-3892-cr

Caption [use short title]

Motion for: permission to file an oversized brief

Set forth below precise, complete statement of relief sought:

an order permitting appellant to file an oversized brief of 20,401 words and to file this motion

out of time.

US v. HILL

MOVING PARTY: ELVIN HILL

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: UNITED STATES OF AMERICA

MOVING ATTORNEY: YUANCHUNG LEE, ESQ.

Federal Defenders of New York, Inc., Appeals Bureau
52 Duane Street, 10th Floor
New York, New York 10007
(212) 417-8742 yuanchung_lee@fd.org

[name of attorney, with firm, address, phone number and e-mail]

Assistant United States Attorney, Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
(718) 254-6034

Court-Judge/Agency appealed from: MATSUMOTO J., U.S.D.J./E.D.N.Y.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

Yes No

Has this relief been previously sought in this Court?

Yes No

Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:

Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:

Yes No Don't Know

Is oral argument on motion requested?

Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

Yes No If yes, enter date: _____

Signature of Moving Attorney:

Date: 03/20/2015

Service by: CM/ECF

Other [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA

: D E C L A R A T I O N

: Docket No. 14-3892-cr

- v -

:

ELVIN HILL,

:

Defendant-Appellant. :

-----X

YUANCHUNG LEE declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am an attorney with the Federal Defenders of New York, Inc., Appeals Bureau, counsel to Appellant Elvin Hill. I respectfully submit this declaration in support of appellant's motion for leave to file an oversized brief of 20,401 words and for permission to file this motion out of time. Assistant United States Attorney Daniel Silver, who represents the Government on this appeal, does not oppose this application.

2. Elvin Hill was convicted, following a jury trial, of using a firearm to murder Fredy Cuenca during a Hobbs Act robbery, in violation of 18 U.S.C. § 924(j)(1). He was sentenced to 43 years' imprisonment.

3. This is an unusual case with a long and winding history. The underlying murder occurred in 1997, nearly seventeen years before the start of the trial. Mr. Hill is charged with a capital offense, though the Government declined to seek the death penalty.

Numerous motions were filed during nearly two years of pretrial litigation, including two different motions to dismiss (for prosecutorial delay and for misconduct in the grand jury), a multi-pronged motion to suppress (for two illegal detentions and for an unnecessarily suggestive identification procedure), as well as numerous in limine motions regarding evidentiary issues. These motions triggered multiple hearings and the district court issued several opinions to resolve them.

Thus, the Statement of Facts is necessarily a great deal longer than that required for a typical appeal.

4. In addition, the four legal arguments I intend to raise are complicated and require in-depth analysis. Over the last week, I have made substantial efforts to cut the brief down to include only what is absolutely essential to represent Mr. Hill effectively given the claims raised, but the brief is still oversized.

5. Mr. Hill is serving a sentence of 43 years in prison. This appeal raises several strong claims that the district court deprived him of his right to a fair trial and thus that a new trial is warranted. In my opinion, cutting the brief further would not do justice to his appeal and would risk omitting facts and arguments essential to providing effective assistance of counsel and facilitating this Court's proper disposition of the case.

6. I make this motion out of time because I did not realize that the brief would be this long and I have been trying to cut the brief right up until today.

WHEREFORE, appellant respectfully request permission to file an oversized brief of 20,401 words, and to file this motion out of time.

I declare under penalty of perjury, 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: New York, New York
March 20, 2015

/s/
YUANCHUNG LEE

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Motion and Declaration has been served by CM/ECF on the United States Attorney/E.D.N.Y.; Attention: **DANIEL S. SILVER, ESQ.**, Assistant United States Attorney, **c/o PATRICE JOHNSON**, Paralegal, 271 Cadman Plaza East, Brooklyn, New York 11201.

Dated: New York, New York
March 20, 2015

/s/
YUANCHUNG LEE